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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

FILE:

Office: MIAMI, FLORIDA

Date:

NOV 17 2004

IN RE:

Applicant:

APPLICATION: Application for Permanent Residence Pursuant to Section 1 of the Cuban Adjustment Act of November 2, 1966 (P.L. 89-732)

ON BEHALF OF APPLICANT:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Miami, Florida, who certified his decision to the Administrative Appeals Office (AAO) for review. The District Director's decision will be withdrawn and the matter remanded to him for further action.

The applicant is a native and citizen of Cuba who filed an application for adjustment of status to that of a lawful permanent resident on January 4, 1999.

The District Director adjudicated the Application to Register Permanent Residence of Adjust Status (Form I-485) under section 1 of the Cuban Adjustment Act (CAA) of November 2, 1966, and determined that the applicant was not eligible for adjustment of status because she was not inspected and admitted or paroled into the United States. The District Director, therefore, denied the application. *See District Director's Decision* dated January 28, 2004.

On notice of certification, counsel states the District Director erred in denying the applicant under CAA because the applicant is applying for adjustment of status under section 202 of the Nicaraguan Adjustment and Central American Relief Act (NACARA). Counsel notes that although the applicant did not check box "h", on her Form I-485, she clearly marked "NACARA" on the top of all the documents she submitted in support to her application for adjustment of status.

A review of the record of proceeding reveals that the applicant checked box "e" on Form I-485, which states:

I am a native or citizen of Cuba admitted or paroled into the U.S. after January 1, 1959, and thereafter have been physically present in the U.S. for at least 1 year.

The record of proceeding further reveals that on all the documents submitted with the Form I-485 the applicant clearly noted "NACARA" the top of each form. Based on this the AAO concludes that the applicant is trying to apply for adjustment of status under section 202 of NACARA.

Section 202 of NACARA states in pertinent part:

(a) ADJUSTMENT OF STATUS.--

(1) IN GENERAL. --Notwithstanding section 245(c) of the Immigration and Nationality Act, the status of any alien described in subsection (b) shall be adjusted by the Attorney General to that of an alien lawfully admitted for permanent residence, if the alien--

(A) applies for such adjustment before April 1, 2000; and

(B) is otherwise eligible to receive an immigrant visa and is otherwise admissible to the United States for permanent residence, except in determining such admissibility the grounds for inadmissibility specified in paragraphs (4), (5), (6)(A), and (7)(A) of section 212(a) of the Immigration and Nationality Act shall not apply.

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(b) ALIENS ELIGIBLE FOR ADJUSTMENT OF STATUS.--

(1) IN GENERAL. --The benefits provided by subsection (a) shall apply to any alien who is a national of Nicaragua or Cuba and who has been physically present in the United States for a continuous period, beginning not later than December 1, 1995, and ending not earlier than the date the application for adjustment under such subsection is filed, except an alien shall not be considered to have failed to maintain continuous physical presence by reason of an absence, or absences, from the United States for any periods in the aggregate not exceeding 180 days.

According to the record of proceeding the applicant entered the United States on October 22, 1988, applied for asylum on April 29, 1989, and filed Form I-485 on January 4, 1999. Therefore she may be eligible for adjustment of status under section 202 of NACARA.

Based on the above, a new interview appointment shall be scheduled regarding the application for permanent residence under NACARA section 202. Once a new interview has been conducted a new decision shall be entered, which, if adverse to the applicant, shall be certified to the AAO for review accompanied by a properly prepared record of proceeding.

ORDER: The District Director's decision is withdrawn. The matter is remanded to him for further action consistent with the foregoing discussion.